



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No. 2683-23

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although you did not file your application in a timely manner, the statute of limitations was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 13 December 2023. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD)/mental health condition (MHC) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). The Board also considered an advisory opinion (AO) from a qualified mental health professional, dated 12 October 2023. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Navy on 2 August 1976. On 1 March 1979, a special court-martial (SPCM) convicted you of 16 days of unauthorized absence (UA) and breaking restriction. On 23 June 1979, a military psychologist evaluated you and diagnosed you with a mix personality disorder and alcohol abuse. As a result, you were notified of pending administrative separation action by reason of unsuitability due to a personality disorder. However, on 1 August 1979, you went into a UA status and remained until 22 August 1979. On 8 April 1980, civil authorities convicted you of receiving stolen property. On 22 July 1980, you

were in a UA status for two days and broke restriction. On 15 September 1980, a summary court-martial (SCM) convicted you of UA totaling 110 days and possession of marijuana. On 4 December 1980, you received non-judicial punishment (NJP) for UA totaling three days and two specifications of possession of marijuana. On 15 December 1980, a drug abuse evaluation determined you were not drug or alcohol dependent. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to frequent involvement and misconduct due to civil conviction. You elected to consult with legal counsel and requested an administrative discharge board (ADB). The ADB found that you committed misconduct due to frequent involvement/civil conviction and recommended you receive an Other Than Honorable (OTH) characterization of service. The separation authority concurred with the ADB and directed an OTH discharge by reason of civil conviction. On 21 April 1981, you were so discharged.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to your desire to upgrade your discharge and contentions that you incurred PTSD and other mental health condition during military service, which contributed to your misconduct. You also contended you incurred PTSD and other mental health condition due to stressors from serving in the Navy, suicide of a childhood friend, harassment and maltreatment from senior leaders, dangerous practices with explosive ordinance and an in-service suicide attempt. For purposes of clemency and equity consideration, the Board noted you provided a personal statement.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 12 October 2023. The AO stated in pertinent part:

That Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. Unfortunately, he has provided no additional medical evidence to support his claims. His in-service misconduct appears to be consistent with characterological features, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition, other than his in-service diagnosed personality disorder."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJP, SPCM, SCM, and civil conviction, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved drug related offenses. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board noted that illegal drug use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. In addition, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. As pointed out in the AO, you provided no additional medical evidence to support your claims and your in-service misconduct appears to be consistent with characterological features, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. Finally, the Board noted you provided no evidence, other than your personal statement, to substantiate your contentions. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. Even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

12/21/2023

